and the recent New York Tenement House Act. In this class of statutes, it is practically impossible for the legislature to lay down a clear line between cases of legality and illegality; a rule is adopted broad enough to cover all cases, but the law is to be enforced only when the good sense of the executive prompts him to act. As such laws do not differ in appearance from those requiring strict enforcement, it must be for the executive to decide to what class each statute belongs, and the power of discretion thus placed in his hands is very wide. It may be that liquor laws are not within the class which requires liberal enforcement, but this is a political question to be decided by the mayor, who is responsible primarily to the people of the city for the wisdom and good sense of his decision.

This brief consideration of the necessities and results of our system of local administration seems to make it clear that, in the present situation in New York City, the mayor should be regarded as possessing the right, in the enforcement of criminal laws, to exercise a wide discretion; though the exact limits of that discretion are perhaps somewhat difficult to define.

STATE REGULATION OF RAILROAD RATES AS AFFECTING INTERSTATE COMMERCE. — Two recent decisions of the federal supreme court deal with the effect of the commerce clause of the federal constitution upon the powers of the states to regulate railroad charges. A constitutional provision of Kentucky forbids a carrier, except by permission of a railroad commission, charging more for a short than a long haul within which the short is included. Actions were brought for violations of this provision. In one case both the long and short hauls were within Kentucky territory, and it was held that although the enforcement of such a regulation under those circumstances might somewhat affect interstate rates the result was too indirect to constitute an interference with interstate commerce. *Louisville & Nashville R. R.* v. *Kentucky*, 22 Sup. Ct. Rep. 95. In the second case the short haul was from Franklin, Ky., to Louisville, Ky., and the long haul for which less was charged was from Nashville, Tennessee, to Louisville, both hauls being in the same direction and the former included within the latter. The railroad alleged that the lower rate from Nashville was necessitated by water competition between that point and Louisville, that the charge from Franklin was reasonable, and that if compelled to equalize the two rates it would raise the Nashville rate. The court held that under these circumstances the state regulation amounted to an interference with interstate commerce, and was invalid. *Louisville & Nashville R. R.* v. *Eubank*, decided January 27, 1902. Justices Gray and Brewer dissented upon the ground that the state had a right to fix the rate from Franklin to Louisville, and in adopting a standard might select the rate fixed by the carrier itself for longer hauls over the same road and that in so doing the state was regulating local rates rather than the standard.

The two cases illustrate the difficulty and delicacy of the question that arises where the exercise by the state of its power to regulate rates affects interstate commerce. It is obvious that all state regulation of common carriers in some degree influences interstate commerce, and it is well settled that a merely incidental effect upon that commerce will not invalidate the regulation by the state of public corporations

doing business within its limits. *Louisville & Nashville R. R.* v. *Kentucky*, 161 U. S. 701. On the other hand the state cannot in its regulation of railroad charges interfere in the rates for transportation between points within and without its own territorial limits. *Wabash, etc., R. R.* v. *Illinois*, 118 U. S. 557. In the case of *Louisville & Nashville R. R.* v. *Eubank*, *supra*, the state regulation of local charges is held invalid because the manner of such regulation will presumably affect the interstate rates of the carrier. Upon principle it would seem clear that the interference with interstate commerce should be very direct in order to set aside a regulation by the state of its domestic concerns. An enforced reduction of local rates will often compel a carrier to raise interstate rates in order to reap the accustomed profit, but such an effect upon interstate commerce would clearly be too remote to constitute an interference. The regulation that the carrier maintain a certain ratio between his state and interstate rates undoubtedly has a more direct effect upon interstate commerce, and judicial opinion may well differ as to whether the effect is sufficiently direct or not.

One consideration tending to negative the assumption that the interstate rate of the carrier will necessarily be affected by the provision in question appears not to have been noticed by the court. If as alleged the Franklin rate is reasonable and the Nashville rate is forced upon the carrier by water competition, it would seem to be a proper case for an application to the railroad commission for permission to maintain the existing rates or at least for relief from the letter of the requirements of the law. It is not to be assumed that such permission will wrongfully be refused. Moreover in case of an arbitrary refusal and the establishment of a local rate that is practically confiscatory, the carrier may avail himself of the Fourteenth Amendment and appeal to the federal courts. If this suggestion is sound it would seem that the assumed directness of the effect of the long and short haul provision upon the interstate rate is not entirely warranted, and that the protection of the carrier lies in the Fourteenth Amendment rather than in the commerce clause of the federal constitution.

UNAVOIDABLE FAILURE OF SUPPLY AS EXCUSE FOR PUBLIC AGENT'S REFUSAL TO SERVE. — Is a corporation, which exercises the right of eminent domain and holds itself out as ready to furnish the public with a certain commodity, justified in refusing to serve new customers on the ground that such additional service would reduce the supply to the prior consumers below their reasonable requirements; or, having a limited supply, is the company bound to divide it equally among all members of the public who may wish to demand a share, regardless of the priority of application? The question in this precise form has not arisen with much frequency, possibly because the public agent in most instances has the ability to increase its supply to meet the demand and under such circumstances is held liable for failure to do so.

In a recent Indiana case a company had been organized for the purpose of furnishing natural gas for fuel to the citizens of Indianapolis. A property owner applied for a connection between her dwelling and the gas main, and the company refused on the ground that through unavoidable causes the supply of gas had failed to such an extent that